DOCUMENT RESUME

ED 443 203 EC 307 895

TITLE	Guidelines: Procedural Safeguards. Prior Written Notice and Parental Consent Procedures.
INSTITUTION	North Dakota State Dept. of Public Instruction, Bismarck. Div. of Special Education.
PUB DATE	1999-08-01
NOTE	40p.
AVAILABLE FROM	North Dakota Dept. of Public Instruction, Dept. of Special Education, 600 East Boulevard Ave., Dept 201, Bismarck, ND 58505-4149; Tel: 701-328-2277 (Voice); Tel: 701-328-4920 (TDD); Fax: 701-328-4149.
PUB TYPE	Guides - Non-Classroom (055)
EDRS PRICE	MF01/PC02 Plus Postage.
DESCRIPTORS	Compliance (Legal); *Disabilities; *Due Process; Educational Legislation; Elementary Secondary Education; Federal Legislation; *Federal Regulation; Guidelines; *Parent Participation; *Special Education; *State Standards
IDENTIFIERS	Individuals with Disabilities Educ Act Amend 1997; *North Dakota

ABSTRACT

These guidelines are intended to assist North Dakota special educators and administrators in providing procedural safeguards including prior written notice and parental consent. Guidelines are closely correlated with requirements under the Individuals with Disabilities Education Act (IDEA) 1997. Each section of these guidelines summarizes relevant requirements under the IDEA regulations. The section on procedural safeguards is followed by a table summarizing procedures regarding prior written notice, procedural safeguards, and parental consent. Separate sections specify guidelines for prior written notice and parental consent for evaluation and special education services. Appended are the full text of the relevant federal regulations and sample forms. Also appended is a document for parents entitled, "Procedural Safeguards in Special Education for Children and Parents." This booklet also covers topics such as records, evaluation procedures, least restrictive environment, educational surrogate parents, discipline, and private school placement. (DB)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 443 203

SPECIAL EDUCATION IN NORTH DAKOTA

North Dakota Department of Public Instruction
Dr. Wayne G. Sanstead, State Superintendent
Office of Special Education
600 E. Boulevard Ave., Dept. 201
Bismarck, ND 58505-0440

701-328-2277 (Voice)
701-328-4920 (TDD)
701-328-4149 (Fax)

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

✓ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL HAS BEEN GRANTED BY

Kolberg

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

1

BEST COPY AVAILABLE

Guidelines:

Procedural Safeguards: Prior Written Notice and Parental Consent Procedures

North Dakota Department of Public Instruction

EC 307895

BEST COPY AVAILABLE

CIVIL RIGHTS STATEMENT. In accordance with all regulations, guidelines and standards adopted by the US Department of Education, the US Department of Agriculture and the ND Human Rights Act, the ND Department of Public Instruction prohibits discrimination on the basis of age, gender, race, color, religion, national origin, status with regard to marriage or public assistance, disability or political beliefs. All divisions of the Department of Public Instruction will insure that no one is denied participation in, or denied the benefits of, or subjected to discrimination under any department program or activity.

Equal education opportunity is a priority of the ND Department of Public Instruction.

Publication Date: 8/1/99

Cover artwork reprinted by permission from Circles of Friends *by Robert and Martha Periske. Nashville: Abingdon Press*

Table of Contents

Introduction 1
- Special Education Unit's Local Responsibilities

Procedural Safeguards 2
- Federal Regulation Sec. 300.504
- Federal Regulation Sec. 300.503(c)

Summary of Procedures Regarding Prior Written Notice, Procedural Safeguards and Parental Consent 4

Prior Written Notice 5
- Federal Regulation Sec. 300.503
- Preparing the Prior Written Notice Form
- Reason Notice Is Being Given

Parental Consent for Evaluation and Special Education Services 11
- Federal Regulation Sec. 300.505
- Consent for Initial Evaluation and Reevaluation
- Federal Regulation Sec. 300.345

Appendix 15
- Federal Regulations:
  - Sec. 300.345
  - Sec. 300.503
  - Sec. 300.503(c)
  - Sec. 300.504
  - Sec. 300.505
- Consent for Evaluation
- Prior Written Notice
- Consent for Initial Placement in Special Education Services
- *Procedural Safeguards in Special Education for Children and Parents*

Introduction

These guidelines, prepared by the Office of Special Education of the North Dakota Department of Public Instruction (DPI) will assist special educators and administrators in providing prior written notice and parental rights, and in obtaining parental consent. Procedural safeguards ensure that parents are adequately informed of actions proposed or refused by the school, and know the options for themselves and their children, including refusal to consent to evaluation, placement, or services.

Parental involvement provides a more global view of the child's learning or behavioral difficulties in school, home and community environments, resulting in a more comprehensive evaluation and development of an educational plan addressing the student's unique needs and characteristics.

The Individuals with Disabilities Education Act Amendments of 1997 (P.L. 105-17), referred to as IDEA 97, emphasize improving results for children with disabilities. IDEA 97 also maintains the importance of the procedural safeguards that have been in place for children and their parents since 1975. This guidance document has been revised to reflect changes in the law.

Federal requirements set forth the conditions under which parental prior written notice must be provided, what the notice must include, and when parental consent must be obtained. (See Appendix for the full text of regulations covered in this document.) This document also contains instructions for preparing prior written notice and parental consent forms.

The table on page 4, "Summary of Procedures Regarding Prior Written Notice, Procedural Safeguards, and Parental Consent," indicates when school personnel must take each of the three actions.

The DPI has developed model forms and instructions for "Consent for Evaluation" and "Consent for Initial Placement in Special Education Services." The DPI's booklet for giving prior notice to parents, *Procedural Safeguards in Special Education for Children and Parents*, is also attached, along with recommended forms, in the Appendix.

Special education unit's local responsibilities

Each special education unit is required to have specific procedures in place to implement federal requirements. Using the Summary of Procedures provided in this document on page 4, the procedures should be described in the unit's procedural handbook. These include:

- actions to be taken, including specific steps to implement them;
- timelines for the action;
- forms or materials to be used, and instruction for their use;
- means and location of documentation to verify action has been taken; and
- persons responsible for carrying out the procedure.

Procedural Safeguards

Federal regulations require "a full explanation of all of the procedural safeguards available to the parents…" as part of the prior notice. The *Procedural Safeguards in Special Education for Children and Parents* booklet, which is available through each special education unit and is also in this document's Appendix, contains a complete listing.

Commonly known as the Blue Book

The DPI has also developed the *Parent Guide to Special Education* to more comprehensively explain parents' rights and the process for a student to access special education services. Give it to parents and carefully explain it to them at:

- the time of referral for an initial evaluation
- any time thereafter at a parent's request.

North Dakota's parent advocacy organizations have cited the "first contact" with parents as critical in helping families understand the process and their roles as active team members. Allow sufficient time and attention for explanations during this session with parents.

Sec. 300.503(c)

(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must be:
(i) Written in language understandable to the general public; and
(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure:
(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;
(ii) That the parent understands the content of the notice; and
(iii) That there is written evidence that the requirements in paragraphs (c)(2) (i) and (ii) of this section have been met.

(Authority: 20 U.S.C. 1415(b) (3), (4) and (c) 1414 (b) (1))

Sec. 300.504

Procedural safeguards notice

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum:
(1) Upon initial referral for evaluation;
(2) Upon each notification of an IEP meeting;
(3) Upon reevaluation of the child; and
(4) Upon receipt of a request for due process under Sec. 300.507.

(b) Contents. The procedural safeguards notice must include a full explanation of all procedural safeguards available under Secs. 300.403, 300.500-300.529, and 300.560-300.577 relating to:
(1) Independent educational evaluation;
(2) Prior written notice;
(3) Parental consent;
(4) Access to educational records;
(5) Opportunity to present complaints;
(6) The child's placement during pendency of due process proceedings;

Sec. 300.504

(7) Procedures for students who are subject to placement in an interim alternative educational setting;
(8) Requirements for unilateral placement by parents of children in private schools at public expense;
(9) Mediation;
(10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
(11) State-level appeals (if applicable in that State);
(12) Civil actions; and
(13) Attorneys' fees;
(14) The State complaint procedures under Secs. 300.660–300.662, including a description of how to file a complaint and the timelines under those procedure

(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must meet the requirements of Sec. 300.503(c).

(Authority: 20 U.S.C. 1415(d))

Summary of Procedures Regarding Prior Written Notice, Procedural Safeguards, and Parental Consent

PROCEDURE	PRIOR WRITTEN NOTICE	PROCEDURAL SAFEGUARDS	PARENT CONSENT*
Mass screening: procedures used with all enrolled students to identify possible areas of difficulties that could interfere with learning. Examples include screening for vision or hearing, or review of records of all students to identify students at-risk academically.	Not required, but suggested parents be informed	Not required	Not required
Selective screening: procedures used with selected children who are referred due to identified risk factors. It is done to determine the significance of the risk factors to the child's growth and development or academic performance. The result determines whether there is need for referral to BLST or for evaluation.	Required	Not required	Required
BLST: a general education intervention to assist teachers to plan interventions for students who are having difficulty in the general education environment. Classroom components are modified (e.g., mode of presentation, teaching strategies, curriculum, positive behavior interventions, etc.)	Not required	Not required	Not required, but involvement urged
Initial evaluation: the first multidisciplinary evaluation of a student who is referred when BLST intervention fails to adequately address the student's difficulties. If a student has received special education services, has been dismissed, and then is referred a second time, the procedures associated with initial evaluation must be followed.	Required	Required	Required
Reevaluation: periodic reevaluation (conducted every three years as required, or more frequently as requested) of students receiving special education services.	Required	Required	**Required**
Initial IEP development: preparation of an Individualized Education Program by a team of participants as required by regulations following an initial evaluation.	Required	Required	Not required
Initial placement: the first time a multidisciplinary team uses assessment data, analyzes and plans for a student's unique educational needs, and concludes that specially designed instruction is required to meet those needs. Typically, the placement decision is made as part of the IEP meeting. If a student has received special education services and has been dismissed, the initial placement procedures must be followed if the student is subsequently evaluated and determined to be in need of special education services again.	Required	Required	Required
Annual IEP review: review of current IEP and preparation of a new or revised IEP at least every 12 months by a team of participants as required by regulations. Review of placement as well as plans for programming and services are included.	Required	Required	Not required
Dismissal from program: termination of special education services because the student no longer needs them, or the parent or student requests termination of services.	Required	Required	Not required
Registration of a due process complaint: if a parent disagrees with the identification, evaluation, educational placement or other aspects relating to their child's free appropriate public education, they may file a written complaint or request a due process hearing.	Not required	**Required**	Not required

** Parental consent is required when information is collected on an individual child that is not being obtained for all individuals in the same school, grade, or class (Hatch Act, 1974, amended to General Education Provisions Act, 1984, 34 CFR 98).*

Prior Written Notice

Prior written notice is intended to inform parents of proposed or rejected evaluations, changes in their child's program, and upcoming meetings.

Parents are expected to participate in decisions where the school proposes actions that affect identification, evaluation, placement, and programming for their child. Therefore, you must inform parents of proposed actions and their rights prior to making these decisions. Be sure to accompany the prior written notice with the *Procedural Safeguards in Special Education for Children and Parents* booklet.

EXCEPTION

Prior written notice is not required when using procedures intended for all children as part of general education activities. Examples of exempted situations would include mass screenings which involve all students in a class or the Building Level Support Team (BLST) process where interactions are typically between a general classroom teacher and teams. BLST activities, which may still include a special education teacher, help the classroom teacher address learning or behavior difficulties.

Sec. 300.503 Prior notice by the public agency; content of notice

(a) Notice. (1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency:

(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the public agency that also requires parental consent under Sec. 300.505, the agency may give notice at the same time it requests parent consent.

(b) Content of notice. The notice required under paragraph (a) of this section must include:

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of any other options that the agency considered and the reasons why those options were rejected;

(4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

(5) A description of any other factors that are relevant to the agency's proposal or refusal;

(6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

Preparing The Prior Written Notice Form

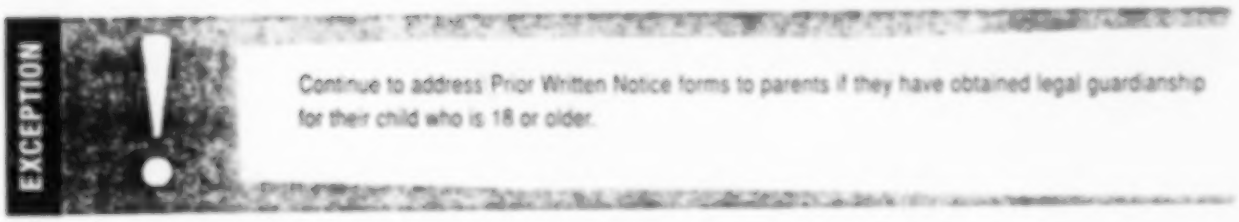
Directions for completing the Prior Written Notice form are given on the following pages.

When preparing and sending the Prior Written Notice form, complete all sections, leaving no sections blank. If "none" or "not applicable" is appropriate, enter those words.

Date, parent, person sending the notice, and student. Enter the date (month, day, year) the notice is being sent, the student's name, the parents' names, and the name, title, and sender's location or school in the appropriate places.

Jointly address the prior written notice to parents and a student 14 years of age or older, or who will be 14 by the time of the proposed action. Or send the original to the parent and provide the student with a copy.

Address the Prior Written Notice form to students 18 or older, or who will be 18 by the time of the proposed action. If the student grants written permission, you may send a copy to the parents. IDEA and the Family Educational Rights and Privacy Act (FERPA) require this transfer of rights at 18.



Continue to address Prior Written Notice forms to parents if they have obtained legal guardianship for their child who is 18 or older.

Reason Notice Is Being Given

From the listing below, you would check all applicable reasons Prior Written Notice is being given. For example, a meeting to discuss results of an initial evaluation and determine eligibility for special education services might reasonably be expanded into a meeting to develop the individualized education program (IEP). If so, you would check both items 2 and 6.

1 **Referral For Initial Evaluation**
The student has been referred for a diagnostic assessment following BLST procedures. Documentation of the meeting will include development of a Student Profile and Assessment Plan.

2 **Determination Whether The Child Has A Disability Under IDEA**
The assessment team, which must include parents, will make this decision through the development of an integrated written assessment report. Some children may have a disability that affects a major life activity but does not fit into one of the IDEA categories of disability. These children may be protected by a different federal law, Section 504 of the Rehabilitation Act of 1973.

3 **Need For Additional Evaluation**
The student is currently receiving special education services and further evaluation is needed to determine unique needs for appropriate services. For example, school personnel or parents may desire additional assessment information if new medical conditions appear after the child began receiving special education services. Also, teachers working with a child over time may suspect that additional conditions are influencing educational performance and need to be assessed.

4 **Reevaluation Of The Child's Continued Need For Special Education Services**
The student has been receiving special education services and needs reevaluation to determine eligibility for continued services. Reevaluation is required every three years, more frequently if conditions warrant it, or if the child's parent or teacher requests it.

5 **Discussion Of Reevaluation Results**
Reevaluation information needs review with the full team. This includes review of evaluation information when dismissal from special education services is being considered.

6 **Development Of An Individualized Education Program For The Child**
A meeting is being called to develop the student's initial or annual IEP and when necessary, a transition plan. After completing the IEP, the team will determine whether the student requires special education and related services. Complete the Proposed Meeting Arrangements section at the end of the form when scheduling an IEP meeting.

Transition planning is required to begin no later than age 14, and when determined appropriate, at an age younger than 14.

When applicable, address transition services at the IEP meeting. Indicate this purpose in the Prior Written Notice form.

7 **Review Or Revision Of The Child's Individualized Education Program (IEP)**
This also requires a transition plan when applicable. A meeting is being called to review or revise an already developed IEP, or a significant change is needed in a student's program. Significant changes may include addition or deletion of goals; an increase or decrease in the amount of services; or a proposed or refused change in the type of service delivery; for example, moving from direct instruction to consultation to support reading instruction in the general education classroom.

Periodic IEP reviews must consider transition services, and that purpose must be so indicated on the Prior Written Notice form if the student is 14 or older or if it has been determined appropriate for a younger student.

Reviews are typically done within 12 calendar months of the previous IEP meeting. An IEP can never extend beyond 12 calendar months but it can be reviewed sooner or written for shorter periods (e.g., one month, one semester, etc.).

8 **Graduation Or Exit From Special Education Services**
Special education services no longer seem necessary, or the parent or student requests termination of services.

9 **Other Considerations**
This is the only one which requires a written description rather than a check. Describe in writing situations (e.g., discipline, extended school year, etc.) where prior written notice to parents is appropriate due to the school's proposal or refusal to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the child.

ACTION TO TAKE EFFECT

Enter the date the action will be effective. Allow sufficient time for parents to consider the proposed action.

1. **Proposal/Rejection Of Action**
Describe, and give specific reasons, for the team's decision to propose or reject the action checked above. For example, a proposed action may be initiation of an IEP goal the IEP team discussed and agreed upon, but delayed until another goal could be accomplished. In this case, the reason for action (initiating the new goal) would be that "a previous goal has been completed and the student is ready to work on the new goal agreed upon by the IEP team." A case demonstrating an example of a reason for rejection was a parent's request for an amendment to the child's record because of perceived inaccuracies. The school believed the records to be accurate. In a case such as this, the reason for rejection might be stated as "review of records and interviews with persons creating the records verified the accuracy."

2. **Actions Considered Prior To Proposal**
List all options considered before the proposed action was selected. For example, prior to a referral for evaluations, options might have included consultation with the BLST and several trial interventions such as different seating, school-home journal regarding assignments or behavior and others. If the action proposed is a meeting only, the entry may be "not applicable".

3. **Rejection Of Options Stated In Item 2**
Describe why the options stated in the space above were not appropriate for the student at this time. If the action proposed is a meeting only, the entry may be "not applicable".

4. **Actions Stated In Item 1**
The action stated in item 1 above is based on the following assessment procedures, tests, records or reports. List the documentation used to assist in making this decision.

5. **Relevant Factors**
List and describe those factors considered in proposing the above action but which may not be specific to evaluation or reports. Examples include change in schedules, personnel changes, medical issues and other factors.

Checked Items To Be Noted

Check the appropriate action(s) to be taken by the parent. If a meeting is being arranged, as indicated by item 3, complete the Proposed Meeting Arrangements portion of the Prior Written Notice form. If the situation requires that parents be informed of their rights, check item 4 and enclose the *Procedural Safeguards in Special Education for Children and Parents* booklet. Attach any additional materials, such as the Consent for Evaluation form or the Consent for Initial Placement in Special Education Services form, as appropriate.

Contact Information

Enter the name and contact information for the person responsible for coordinating meeting plans and answering parents' questions.This is usually the same individual.

Proposed Meeting Arrangements

Complete this section when a meeting is proposed. Meetings with parents are required for certain procedures (e.g., development or revision of the IEP).

Because parents are part of the team process, they must be included and informed of school actions and findings. If parents object to a proposed action and request a meeting, the school cannot carry out the proposed action until the meeting is held and a decision is made.

Date, Time, Location, And Meeting Participants

Record specific meeting arrangements. Enter the name and position/title of each person expected to participate in the meeting. Federal regulations do not require including the individual's position or title. However, to ensure that parents are fully aware of other team members and their roles, this information is strongly recommended. For example, parents may not know the school counselor, school psychologist, administrators, or others simply by their names.

The purpose of listing invited participants in the Proposed Meeting Arrangements section is to inform parents who will be at the meeting.

As indicated earlier, any IEP meeting must include consideration of transition services for a student 14 years of age or older at the time of the proposed action, or for a younger student, if determined appropriate and the school must invite this student.

The school must take steps to encourage the student to attend the IEP meeting. If the student cannot be persuaded to attend, the school must ensure that the student's preferences and interests are considered and documented in the planning process. (See a discussion of this requirement in *Guidelines: Individualized Education Program Planning Process.*)

The school must also invite a representative of any other agency that is likely to be responsible for providing or paying for transition services.

Required participants for evaluation meetings are identified in *Guidelines: Evaluation Process.* Other required IEP meeting participants are identified in *Guidelines: Individualized Education Program Planning Process.*

Because the Prior Written Notice form provides details concerning proposed actions and meetings, the school may wish to use copies of the completed form to inform other persons. Supplementary notes, requests for information, or other materials could be attached to these copies of the Prior Written Notice form, as appropriate.

All sections of the Prior Written Notice form must be completed. If a section is not applicable, that should be indicated rather than leaving the section blank.

Parental Consent for Evaluation and Special Education Services

IDEA 97 amended the requirement regarding parental consent. Previously, parental consent was required for initial evaluation and initial placement, but not for reevaluation. IDEA 97, however, also requires parental consent for reevaluation.

Obtain consent separately for each of these instances. For example, consent for initial evaluation may not be construed as consent for initial provision of special education services or for reevaluation.

Sec. 300.505

Parental consent

(a) General.

(1) Subject to paragraphs (a)(3), (b) and (c) of this section, informed parental consent must be obtained before:
  (i) Conducting an initial evaluation or reevaluation; and
  (ii) Initial provision of special education and related services to a child with a disability.

(2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.

(3) Parental consent is not required before:
  (i) Reviewing existing data as part of an evaluation or a reevaluation; or
  (ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(b) Refusal. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the agency may continue to pursue those evaluations by using the due process procedures under Secs. 300.507-300.509, or the mediation procedures under Sec. 300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent.

(c) Failure to respond to request for reevaluation.
  (1) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond.
  (2) To meet the reasonable measures requirement in paragraph (c)(1) of this section, the public agency must use procedures consistent with those in Secs. 300.345(d).

(d) **Additional State consent requirements.** In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(e) **Limitation.** A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d) of this section to deny the parent or child any other service, benefit, or activity of that public agency, except as required by this part.

(Authority: 20 U.S.C. 1415(b)(3); 1414 (a)(1)(C) and (c)(3))

Consent for Initial Evaluation and Reevaluation

The Consent for Evaluation form (see Appendix) will be completed after the assessment team (including parents) have reviewed Student Profile information about the child and developed the Assessment Plan. The Plan clearly identifies the reason for the evaluation, the assessment questions, procedures to address those questions, and the persons responsible for carrying out each procedure. (See *Guidelines: Evaluation Process* for further information.) As a result of being participants in planning the assessment, questions from parents will have been addressed and informed consent can be given.

If parents refuse consent for initial evaluation or reevaluation, the school may continue to pursue those assessments by using due process procedures or mediation. Contact your local school administrator or special education director for further guidance.

When a child's parent fails to respond and the school can demonstrate that it has taken reasonable measures to obtain consent, informed parental consent is not needed for reevaluation. To meet the reasonable measures requirement, the school must use procedures consistent with Regulation 300.345(d) (See Appendix, page 16). Consult the procedural handbook for your special education unit for any additional requirements.

Sec. 300.345

Parental participation

(a) Public agency responsibility — general
Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including:
(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
(2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents:
(1) The notice under paragraph (a)(1) of this section must:
(i) indicate the purpose, time, and location of the meeting and who will be in attendance; and
(ii) Inform the parents of the provisions in Secs. 300.344 (a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.
(2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also:
(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in Sec. 300.347(b)(1)(i); and;
(ii) Indicate that the agency will invite the student.
(3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must:
(i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in Sec. 300.347(b)(2);
(ii) Indicate that the agency will invite the student; and
(iii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as:
(1) Detailed records of telephone calls made or attempted and the results of those calls;
(2) Copies of correspondence sent to the parents and any responses received; and
(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of the child's IEP. The public agency shall give the parent a copy of the child's IEP at no cost to the parent.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i))

A new Consent for Evaluation form and a new Consent for Initial Placement form must be completed for a student who has been dismissed from special education services and is later suspected to have a disability.

Parental consent is required for the initial placement of a student in special education. Unless the local special education unit or school district has established policy and procedures that require annual written consent for placement in special education, parents do not have to give consent every year.

Some special education units use the IEP as an annual placement document. If the parent disagrees with certain portions of the IEP and refuses to give consent, services to the student may be in question. Confusion can result regarding implementation of certain portions of the IEP or if services are to be terminated altogether. Conflict may result from this confusion.

The Consent for Initial Placement form (see Appendix) will be completed at the conclusion of the initial IEP meeting if the team, including parents, determines the student needs special education and related services to benefit from general education.

A student who has been dismissed from special education services and later is suspected to have a disability must have a new Consent for Evaluation form completed. A student who has been dismissed from special education services and later is found to need those services must have a new Consent for Initial Placement form completed.

Appendix

Federal Regulations

300.345 Parental Participation

300.503 Prior Notice by the Public Agency; Content of Notice

300.504 Procedural Safeguards Notice

300.505 Parental Consent

Forms

Consent for Evaluation

Prior Written Notice

Consent for Initial Placement in Special Education Services

Booklet

Procedural Safeguards in Special Education for Children and Parents

Sec. 300.345 Parental participation

(a) Public agency responsibility — general
Each public agency shall take steps to ensure that one or both of the parents of a child with a disability are present at each IEP meeting or are afforded the opportunity to participate, including:
(1) Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend; and
(2) Scheduling the meeting at a mutually agreed on time and place.

(b) Information provided to parents:
(1) The notice under paragraph (a)(1) of this section must:
(i) indicate the purpose, time, and location of the meeting and who will be in attendance; and
(ii) Inform the parents of the provisions in Secs. 300.344 (a)(6) and (c) (relating to the participation of other individuals on the IEP team who have knowledge or special expertise about the child.
(2) For a student with a disability beginning at age 14, or younger, if appropriate, the notice must also:
(i) Indicate that a purpose of the meeting will be the development of a statement of the transition services needs of the student required in Sec. 300.347(b)(1)(i); and;
(ii) Indicate that the agency will invite the student.
(3) For a student with a disability beginning at age 16, or younger, if appropriate, the notice must:
(i) Indicate that a purpose of the meeting is the consideration of needed transition services for the student required in Sec. 300.347(b)(2);
(ii) Indicate that the agency will invite the student; and
(iii) Identify any other agency that will be invited to send a representative.

(c) Other methods to ensure parent participation. If neither parent can attend, the public agency shall use other methods to ensure parent participation, including individual or conference telephone calls.

(d) Conducting an IEP meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case the public agency must have a record of its attempts to arrange a mutually agreed on time and place, such as:
(1) Detailed records of telephone calls made or attempted and the results of those calls;
(2) Copies of correspondence sent to the parents and any responses received; and
(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) Use of interpreters or other action, as appropriate. The public agency shall take whatever action is necessary to ensure that the parent understands the proceedings at the IEP meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.

(f) Parent copy of the child's IEP. The public agency shall give the parent a copy of the child's IEP at no cost to the parent.

(Authority: 20 U.S.C. 1414(d)(1)(B)(i))

Sec. 300.503

Prior notice by the public agency; content of notice

(a) Notice. (1) Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency:

(i) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(ii) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

(2) If the notice described under paragraph (a)(1) of this section relates to an action proposed by the public agency that also requires parental consent under Sec. 300.505, the agency may give notice at the same time it requests parental consent.

(b) Content of notice. The notice required under paragraph (a) of this section must include:

(1) A description of the action proposed or refused by the agency;

(2) An explanation of why the agency proposes or refuses to take the action;

(3) A description of any other options that the agency considered and the reasons why those options were rejected;

(4) A description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action;

(5) A description of any other factors that are relevant to the agency's proposal or refusal;

(6) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and

(7) Sources for parents to contact to obtain assistance in understanding the provisions of this part.

(Authority: 20 U.S.C. 1415 (b) (3), (4) and (c), 1414(b)(1))

Sec. 300.503(c)

(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must be:

(i) Written in language understandable to the general public; and

(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(2) If the native language or other mode of communication of the parent is not a written language, the public agency shall take steps to ensure:

(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(ii) That the parent understands the content of the notice; and

(iii) That there is written evidence that the requirements in paragraphs (c)(2) (i) and (ii) of this section have been met.

Authority: 20 U.S.C. 1415(b) (3), (4) and (c) 1414 (b) (1))

Sec. 300.504 **Procedural safeguards notice**

(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents, at a minimum:
(1) Upon initial referral for evaluation;
(2) Upon each notification of an IEP meeting;
(3) Upon reevaluation of the child; and
(4) Upon receipt of a request for due process under Sec. 300.507.

(b) Contents. The procedural safeguards notice must include a full explanation of all procedural safeguards available under Secs. 300.403, 300.500-300.529, and 300.560-300.577 relating to:
(1) Independent educational evaluation;
(2) Prior written notice;
(3) Parental consent;
(4) Access to educational records;
(5) Opportunity to present complaints;
(6) The child's placement during pendency of due process proceedings;
(7) Procedures for students who are subject to placement in an interim alternative educational setting;
(8) Requirements for unilateral placement by parents of children in private schools at public expense;
(9) Mediation;
(10) Due process hearings, including requirements for disclosure of evaluation results and recommendations;
(11) State-level appeals (if applicable in that State);
(12) Civil actions; and
(13) Attorneys' fees;
(14) The State complaint procedures under Secs. 300.660–300.662, including a description of how to file a complaint and the timelines under those procedures

(c) Notice in understandable language. (1) The notice required under paragraph (a) of this section must meet the requirements of Sec. 300.503(c).

(Authority: 20 U.S.C. 1415(d))

Sec. 300.505 Parental consent

(a) General. (1) Subject to paragraphs (a)(3), (b) and (c) of this section, informed parental consent must be obtained before:

(i) Conducting an initial evaluation or reevaluation; and

(ii) Initial provision of special education and related services to a child with a disability.

(2) Consent for initial evaluation may not be construed as consent for initial placement described in paragraph (a)(1)(ii) of this section.

(3) Parental consent is not required before:

(i) Reviewing existing data as part of an evaluation or a reevaluation; or

(ii) Administering a test or other evaluation that is administered to all children unless, before administration of that test or evaluation, consent is required of parents of all children.

(b) Refusal. If the parents of a child with a disability refuse consent for initial evaluation or a reevaluation, the agency may continue to pursue those evaluations by using the due process procedures under Secs. 300.507-300.509, or the mediation procedures under Sec. 300.506 if appropriate, except to the extent inconsistent with State law relating to parental consent.

(c) Failure to respond to request for reevaluation.

(1) Informed parental consent need not be obtained for reevaluation if the public agency can demonstrate that it has taken reasonable measures to obtain that consent, and the child's parent has failed to respond.

(2) To meet the reasonable measures requirement in paragraph (c)(1) of this section, the public agency must use procedures consistent with those in Secs. 300.345(d).

(d) **Additional State consent requirements.** In addition to the parental consent requirements described in paragraph (a) of this section, a State may require parental consent for other services and activities under this part if it ensures that each public agency in the State establishes and implements effective procedures to ensure that a parent's refusal to consent does not result in a failure to provide the child with FAPE.

(e) **Limitation.** A public agency may not use a parent's refusal to consent to one service or activity under paragraphs (a) and (d) of this section to deny the parent or child any other service, benefit, or activity of that public agency, except as required by this part.

(Authority: 20 U.S.C. 1415(b)(3), 1414 (a)(1)(C) and (c)(3))

Consent for Evaluation

Date _____/_____/_____

Student _____

School _____

The multidisciplinary team proposes to conduct (an initial evaluation/reevaluation) of my child to determine eligibility under the Individuals with Disability Education Act. I understand that the proposed action is based on an Assessment Plan developed jointly by school personnel and myself as the parent. I also understand that the decision regarding eligibility will be determined jointly by school personnel and myself, and that I will receive the integrated written assessment report.

I have received a full explanation and understand the procedural safeguards available to me as stated in the *Procedural Safeguards in Special Education for Children and Parents* booklet.

☐ Yes ☐ No Date _____/_____/_____

As the parent of (child) _____

I agree with the multidisciplinary team's proposed evaluation.

☐ Yes ☐ No Date _____/_____/_____

Parent Signature(s) _____

_____

One copy of this form will be retained in the school records and one copy will be given to the parent(s).

Prior Written Notice

Date _____
(Month, Day, Year)

To _____

From _____
(Name, Title, Location, School)

Re _____ _____
(Student)

The following action(s), as checked below, are being considered.

- ☐ 1. Referral for an initial evaluation
- ☐ 2. Determination whether your child has a disability under IDEA
- ☐ 3. Need for additional evaluation
- ☐ 4. Reevaluation of your child's continued need for special education services
- ☐ 5. Discussion of evaluation results
- ☐ 6. Development of an individualized education program for your child. You may invite individuals with knowledge of special expertise about your child. This will include a transition plan if your child is 14 years of age or older.
- ☐ 7. Review or revision of your child's individualized education program. This will include a transition plan if your child is 14 years of age or older.
- ☐ 8. Graduation or exit from special education services.
- ☐ 9. Other considerations _____

THE ACTION WILL TAKE EFFECT _____/_____/_____

The following actions apply to this notice and a description is given below:

1. This action is being proposed/rejected because _____
_____
2. Prior to this proposal the following actions were considered _____
_____
_____
3. The options stated in item 2 were rejected because _____
_____
_____
4. The action stated in item 1 is based on the following evaluation procedures, tests, records or reports _____
_____
_____
5. Other factors relevant to the action proposed above are _____
_____
_____

Please note the following checked items:

☐ 1. Sign and return the CONSENT FOR EVALUATION form. (Tests to be used are noted on the attached form.)

☐ 2. Complete the enclosed _____ and return it to us.

☐ 3. Arrange to meet with the team as described below, to discuss the proposed actions.

☐ 4. Read carefully your enclosed copy of *Procedural Safeguards in Special Education for Children and Parents*. We will review your rights with you when we meet. A copy of this booklet must be given to you when:

- your child is initially referred for evaluation;
- you are notified of an IEP meeting;
- the school proposes to reevaluate your child; and
- if you register a due process complaint.

You may obtain a copy of this booklet at any time from your local special education office.

If you have questions about the information provided, or want help in understanding these procedural safeguards, please contact me.

Please call _____ at _____

Between the hours of _____ and _____

Proposed Meeting Arrangements

Date _____ Time _____

Location _____

At the present time, we anticipate that the following individuals will be meeting with us:

_____ _____

_____ _____

_____ _____

If 14 years of age or older, your child will be invited to attend. Please encourage this participation.

Please let us know if this is a convenient time for you so we can finalize plans for the meeting. If you wish to have someone else attend with you, you may do so.

Consent for Initial Placement in Special Education Services

Date_____/_____/_____

Student _____

School _____

The multidisciplinary team proposes the following services for my child:

_____

_____

The suggested placement is based on my child's need for specially designed instruction as written in the individualized education program and is due to my child's disability. I understand that the need for this placement will be reconsidered in terms of my child's progress at least annually.

I have received a full explanation and understand the procedural safeguards available to me as stated in the *Procedural Safeguards in Special Education for Children and Parents* booklet.

☐ Yes ☐ No Date_____/_____/_____

As the parent of (child) _____, I agree with the multidisciplinary team's proposed placement.

☐ Yes ☐ No Date_____/_____/_____

Parent Signature(s) _____ _____

_____

One copy of this form will be retained in the school records and one copy will be given to the parent(s).

SPECIAL EDUCATION IN NORTH DAKOTA

North Dakota Department of Public Instruction
Dr. Wayne G. Sanstead, State Superintendent
Office of Special Education
600 E. Boulevard Ave. Dept. 201
Bismarck, ND 58505-0440

701-328-2277 (Voice)
701-328-4920 (TDD)
701-328-4149 (Fax)

Proce[illegible]uards in Special Educ[illegible]Children and Parents

North Dakota
Department of
Public Instruction

CIVIL RIGHTS STATEMENT: In accordance with all regulations, guidelines and standards adopted by the US Department of Education, the US Department of Agriculture and the ND Human Rights Act, the ND Department of Public Instruction prohibits discrimination on the basis of age, gender, race, color, religion, national origin, status with regard to marriage or public assistance, disability or political beliefs. All divisions of the Department of Public Instruction will insure that no one is denied participation in, or denied the benefits of, or subjected to discrimination under any department program or activity.

Equal education opportunity is a priority of the ND Department of Public Instruction.

Publication Date: 8/1/99

Cover artwork reprinted by permission from Circles of Friends *by Robert and Martha Periske. Nashville: Abingdon Press*

BEST COPY AVAILABLE

Table of Contents

Introduction 29
For More Information 29
Notice of Procedural Safeguards 29
Parent Participation 29
Prior Written Notice 30
Parental Consent 31
- The First Evaluation
- Reevaluation
- Initial Placement
- Refusal

Records 31
Evaluation Procedures 32
Least Restrictive Environment 32
Educational Surrogate Parents 33
If You Have Concerns 33
- Mediation
- Written Complaint

Due Process Hearing 34
- Disclosure of Evidence Before Hearing
- Child's Placement During Proceedings
- Attorney Fees

Discipline ..... 35 – 36
- Short Term Removals
- Longer Removals
- Manifestation Determination
- Drug and Weapon-Related Misconduct
- Removal by a Hearing Officer
- Interim Alternative Educational Setting

Private School Placement 37
Other Resources 38

Children with Disabilities Under Section 504

Some children may have a disability that affects a major life activity that does not fit into one of the categories of disability under the Individuals with Disabilities Education Act (IDEA). These children may be protected by a different federal law — Section 504 of the Rehabilitation Act of 1973. The rights of "504 only" children and their parents are in some ways similar and in some ways different from the procedural safeguards described in this booklet. For more information about Section 504, contact your school district's Section 504 coordinator.

Introduction

Children with disabilities and their parents are guaranteed certain educational rights, known as procedural safeguards, from ages 3 through 21. This booklet helps parents or guardians of these children make appropriate educational decisions on behalf of the child.

Following each main topic will be a section that explains your rights:

△ *In Other Words...*

The Individuals with Disabilities Education Act (IDEA) is a federal special education law that requires school districts to provide a free appropriate public education (FAPE) to eligible children with disabilities. This free appropriate public education refers to special education and related services, described in an Individualized Education Program (IEP) and provided to the child in the least restrictive environment. The IDEA also includes the procedural safeguards in this booklet, which contains current federal regulations.

For more information

Whenever you need assistance, your first step is to contact your local school district. Talk to your child's classroom or special education teacher, the school principal, or the special education director for your school district. Other resources for concerns you may have are also listed at the end of this booklet.

Notice of Procedural Safeguards

This booklet is your notice of procedural safeguards, and must be given to you:

- the first time your child is referred for a special education evaluation;
- each time an individualized education program (IEP) meeting is scheduled for your child;
- each time your child is reevaluated;
- if you file a complaint or request a due process hearing;
- if the school district takes disciplinary action involving a change in placement of more than 10 days for your child;
- if the school district places your child in an interim alternative educational setting for up to 45 days for certain drug and weapons-related misconduct; or
- whenever you request a copy.

Parent Participation

Your participation is essential. You will be given opportunities to become actively involved in meetings about identification, evaluation, and educational placement of your child, as well as other matters related to your child's FAPE. This includes the right to participate in meetings to develop your child's IEP.

In Other Words...
△

To ensure that your child receives a free appropriate public education, you have the right to be fully involved in decisions regarding your child.

Acronyms:

DPI	Department of Public Instruction	IDEA	Individuals with Disabilities Education Act
FAPE	Free Appropriate Public Education	IEP	Individualized Education Program

Prior Written Notice

As an active participant in the decision-making process, you have the right to prior written notice from the school district. The district must inform you in writing of important decisions regarding your child's special education, and you must be notified before those decisions are put into place.

These include decisions to:

- identify your child as a child with a disability, or change your child's eligibility from one disability to another;
- evaluate or reevaluate your child;
- develop an IEP for your child, or change your child's IEP; or,
- place your child in special education services, or change your child's special education placement.

You also have the right to prior written notice from the school district when the district refuses your request to take these actions. Prior written notice must include:

- a description of the action proposed or refused by the school district;
- an explanation of why the action is proposed or refused;
- a description of any other options considered and the reasons why those options were rejected;
- a description of each assessment procedure, test, record or report used as a basis for the action proposed or refused;
- a description of any other factors relevant to the action proposed or refused;
- notice that you can invite individuals with knowledge or special expertise about your child to an IEP meeting;
- a statement that parents of a child with a disability are protected by the procedural safeguards described in this booklet;
- a copy of this *Procedural Safeguards for Children and Parents in Special Education* booklet or how you can get a copy.

Prior written notice must also include resources you can contact for help in understanding these procedural safeguards, and a description of how you can file a complaint.

Prior written notice must be provided in your native language unless doing so is clearly not feasible.

In Other Words...

Δ

The school will notify you by letter if it proposes to change or refuses to change your child's services. The notice must be simple and easy to understand, and information about upcoming meetings must be sent to you sufficiently in advance to allow you to attend.

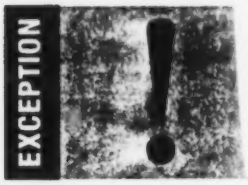
Parental Consent

The First Evaluation

The school district must have your informed written consent before it can evaluate your child, and must inform you about the assessments to be used with your child.

Reevaluation

The school district must have your informed written consent before reevaluating your child. However, your child may be reevaluated without your written consent if the school district can demonstrate it has taken reasonable steps to get your consent and you have not responded.



The school does not need to obtain your consent before reviewing existing data as part of an evaluation or reevaluation.

Initial Placement

You must give your informed written consent before the school district can initially place your child in a special education program or provide special education services to your child.

Refusal

You can refuse consent for an evaluation, a reevaluation, or the initial placement of your child in special education. If the school district believes this service is necessary for your child, it may seek to evaluate or place your child in special education services through a due process hearing. You and the school district may agree to try mediation to resolve your disagreements (for more information on mediation, see page 33).

In Other Words...
Δ

Your written permission is required before your child is first evaluated, reevaluated or placed in special education services.

Records

You have the right to inspect and review all your child's education records:

- before any meeting about your child's IEP;
- before any due process hearing related to your child; and
- within five business days of your request.

Direct your requests to look at your child's records to the building principal or to your school district's special education director.

The Family Educational Rights and Privacy Act (FERPA) and IDEA ensure that you have access to your child's educational records. Your school district has a more detailed written policy about school records, and any parent can request to see this policy. If you disagree with items in your child's records, you can ask that they be changed or removed.

In Other Words...
Δ

You have the right to see or request copies of your child's school records.

Evaluation Procedures

A full, individual, appropriate evaluation of your child must be completed before any special education services begin or before your child is dismissed from services. You must be included in the team that does the evaluation.

Your child must be reevaluated at least once every three years. The team may decide no additional data are needed to determine whether your child continues to be eligible for special education. If so, the school district must notify you of that decision and the corresponding reasons. You still have the right to request an evaluation to determine whether your child continues to be eligible. The school district is not required to conduct the evaluation unless you request it.

An independent educational evaluation is an evaluation by a qualified examiner who is not an employee of the school district responsible for educating your child. You may ask for an independent educational evaluation at school district expense if you disagree with an evaluation completed by the school district.

If the school district does not agree with you that an independent evaluation is necessary, it may request a due process hearing. The school district will not have to pay for an independent evaluation if the hearing is concluded in the district's favor. You may still get an independent educational evaluation at your own expense.

School districts must maintain a list of public and private agencies that meet the district's criteria to conduct independent educational evaluations. The district's criteria will indicate acceptable qualifications of an examiner and location. This list is available to you, and you can request it from your school district's special education director.

The results of independent educational evaluations must be considered by the school district before taking further action regarding your child. These evaluations may be considered evidence in a due process hearing. A hearing officer may also require an independent educational evaluation of your child at school district expense during due process hearing proceedings.

In Other Words...

Δ

You are a part of the team that evaluates your child. At least every three years, this team must consider whether any additional evaluation is needed. If you disagree with the school's evaluation of your child, you can request an independent evaluation, conducted by someone other than the school staff.

Least Restrictive Environment

Every effort must be made to provide the necessary supports that will allow your child to be educated in your neighborhood school. Access to the general education curriculum must be given to your child. As much as possible, your child must be educated with children who do not have disabilities.

In Other Words...

Δ

The least restrictive environment is the setting where your child can receive an appropriate education as close as possible to your home.

Educational Surrogate Parents

When a natural parent or guardian of a child is unknown or unavailable, or if the child is a ward of the state, the school district must assign an individual to act as this child's parental substitute or educational surrogate parent. The surrogate, who has all the procedural rights of a parent, is responsible for representing the child's interests in all matters related to the provision of a FAPE.

In Other Words...
Δ

Sometimes a natural parent or guardian of a child is unknown or unavailable. When that happens, an educational surrogate parent is appointed by the school to represent the child at school meetings.

If You Have Concerns...

IDEA recognizes that parents and schools occasionally disagree and provides several options to help solve these problems. If you have concerns about your child's special education services, first talk to your child's general or special education teacher, the building principal, superintendent, or the district's special education director.

Don't let your concerns accumulate. When a problem first arises, act immediately so steps can be taken as soon as possible to support the working relationship among the staff, your child and you. If your concerns are not resolved, you may want to consider mediation, a written complaint to the North Dakota Department of Public Instruction (DPI) Office of Special Education and/or requesting a due process hearing.

You can obtain a copy of the DPI Office of Special Education's mediation brochure and/or complaints brochure by calling 701-328-2277 or by contacting your local special education director.

Mediation:
You may ask the school district to try mediation. Mediation is voluntary and confidential, and both parents and staff must agree to proceed before a mediator is appointed. Mediators, who are not employees of the school district, are trained in strategies to help people reach agreement over difficult issues. The ND DPI covers costs related to special education mediation.

Written Complaint:
If you believe a school district has violated the IDEA, you may file a written complaint with the DPI. This complaint must describe the problem(s), include your name and contact information, and give specific facts about the problem(s). Your complaint should be sent to:

Director of Special Education
ND Department of Public Instruction - Department 201
600 East Boulevard Avenue, 10th Floor
Bismarck, ND 58505-0440

The DPI must investigate your written complaint and send a written decision within 60 days. This timeline may be extended under certain circumstances.

In Other Words...
Δ

Sometimes you might disagree with the special education testing, services or placement for your child. Try to resolve your disagreements by requesting mediation, which is a free service conducted by a trained, impartial professional not employed by the school district. However, at any time you may file a written formal complaint and/or request a due process hearing. To receive a mediation and/or complaints brochure, or to obtain the form for requesting a due process hearing, call DPI at 701-328-2277.

Due Process Hearing

A due process hearing, which is a formal, legal proceeding, can be requested by parents or by the school district.

If you disagree with the identification, evaluation, educational placement or other aspects relating to your child's FAPE, you can request a due process hearing by contacting the State Director of Special Education at DPI.

A model form for requesting a due process hearing is available from DPI's Office of Special Education by calling 701-328-2277.

Your hearing request must include:

- your child's name and address and the name of the school that your child is attending;
- a description of the problem, including specific facts about the problem; and
- any suggestions you have for solving the problem.

The school district may request a hearing if you refuse consent for evaluation or placement, or to demonstrate that the district has conducted an appropriate evaluation and/or offered a FAPE.

An impartial hearing officer will conduct the hearing. A hearing must be completed and final order issued within 45 days of DPI's receipt of the request unless the hearing officer grants an extension at the request of a party.

A party to a hearing has certain rights, including:

- the right to bring an attorney who can give you advice;
- the right to bring one or more individuals who have knowledge or training about children with disabilities;
- the right to present evidence and confront, cross-examine, and require witnesses to be present;
- the right to a written, or, at the option of the parents, an electronic verbatim record of the hearing; and,
- the right to written, or, at the option of the parents, electronic findings of fact and decisions.

Disclosure of Evidence Before Hearing

At least five business days before a hearing, school districts and parents must disclose to each other all evaluations of the student completed by that date as well as recommendations based on those evaluations that they intend to use at the hearing.

A hearing officer may bar any party that fails to comply with this rule from introducing the undisclosed evaluations or recommendations at the hearing without the consent of the other party.

Child's Placement During Proceedings

During the process of hearing and appeal, your child will remain in the current educational placement. This "stay put" rule applies unless:

- you and the school district agree to another placement;
- your child is applying for initial admission to a public school and you consent to your child's placement in the public school program; or
- your child is removed to an interim alternative educational setting by school personnel or a hearing officer.

Attorney Fees

A court may award reasonable attorney fees to the parents of a child with a disability if the hearing officer rules in the parent's favor. Under certain circumstances, attorney fees may be reduced or denied.

In Other Words...

If you cannot resolve a conflict with your school district, you have the right to a due process hearing conducted by an impartial person.

Discipline

There may be instances when your child's behavior requires the school to use special methods of discipline. Depending on the nature of the behavior, you have the right to be a part of team decisions about disciplinary action.

Short Term Removals

Short term removal from your child's normal educational setting may be up to 10 consecutive school days at one time. Additional removals of not more than 10 consecutive school days in the same school year for separate incidents of misconduct are allowed. However, if a series of short term removals become a pattern, they are considered a change of placement and the requirements for longer removals must be followed. School personnel may use short term removals to the same extent these options would be used with children who do not have disabilities.

Longer Removals

Longer removals include expulsion and suspensions that add up to more than 10 days in a school year. School districts can not take this kind of action for misconduct related to or caused by the student's disability. If a longer removal is being considered, the district must have an IEP meeting, with you and other qualified personnel included in that meeting, to make a "manifestation determination". This meeting must be held within 10 business days of the school district's decision concerning the disciplinary action.

Manifestation Determination

You will be invited to participate as a member of the IEP team, which will determine whether the misconduct is a manifestation of your child's disability. The IEP team may determine that the behavior was not a manifestation if the IEP team:

- reviews all relevant information including:
  - ✓ test results, and any independent educational evaluations;
  - ✓ information provided by the parents;
  - ✓ observations of the child; and,
  - ✓ the child's IEP and placement;

- and determines that, in light of the misconduct:
  - ✓ your child's IEP and placement were appropriate;
  - ✓ the special education services, supplementary aids and services, and behavior intervention strategies were provided as described on your child's IEP;
  - ✓ your child's disability did not impair the ability to understand the impact and consequences of the misconduct; and,
  - ✓ your child's disability did not impair the ability to control the misconduct.

If the IEP team concludes that the misconduct was not a manifestation of your child's disability:

- the school district may take disciplinary action, such as expulsion, in the same manner as it would for children without disabilities;
- if an expulsion hearing is required, the school district must make sure that the special education and disciplinary records of your child are provided to the expulsion hearing officer; and,
- the school district must continue to provide a FAPE to your child consistent with the child's individual needs.

Drug and Weapon-Related Misconduct

School personnel may move a child to an interim alternative educational setting for 45 days if:

- the child carries a weapon to school or to a school function; or,
- the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function; or
- the interim alternative educational setting meets the requirements described below.

Removal by a Hearing Officer

A hearing officer may move a child to an interim alternative educational setting if:

- the child would be substantially likely to cause injury to himself or herself or others in the current placement; and
- the school has made reasonable efforts to minimize the risk of harm in the current placement.

Extensions of 45-day removals by a hearing officer may be repeated, if necessary, when returning the child to the current placement would be dangerous.

If you disagree with the IEP team's decision, you can request an expedited due process hearing.

Interim Alternative Educational Setting

Any interim alternative educational setting must:

- allow your child to continue to participate in the general curriculum, although in a different setting;
- allow your child to continue to receive services and modifications, including those described in your child's IEP, to enable your child to meet IEP goals; and
- include services and modifications designed to address your child's behavior.

You must be a part of the IEP team that determines the specific interim alternative educational setting.

In Other Words...

Discipline is an important factor in learning. The IEP team, which includes you, needs to determine appropriate disciplinary procedures for students with disabilities.

Private School Placement

If you enroll your child in a private school your child may receive some publicly funded special education services. You are entitled to reimbursement for costs associated with the private school placement *only* if a court or hearing officer determines that the school had not made a free appropriate public education available to your child.

The court or hearing officer may reduce or deny reimbursement if you did not make your child available for an evaluation upon notice from the school district before removing your child from public school. You may also be denied reimbursement if you did not inform the school district that you were rejecting the special education placement proposed by the school district and gave notice of your concerns and intent to enroll your child in a private school at public expense.

Your notice to the school district must be given either:

- at the most recent IEP meeting you attended before removing your child from the public school, or
- in writing to the school district at least 10 business days (including holidays) before removing your child from the public school.

A court or hearing officer may not reduce or deny reimbursement to you if you failed to notify the school district for any of the following reasons:

- illiteracy and inability to write in English;
- giving notice would likely result in physical or serious emotional harm to the child;
- the school prevented you from giving notice; or
- you had not received a copy of *Procedural Safeguards in Special Education for Children and Parents* or otherwise been informed of this notice requirement.

In Other Words...

If you place your child in a private school without the school's endorsement, you could be awarded reimbursement for private school educational costs only if a court or hearing officer determines that the local school was not providing a free appropriate public education.

Other Resources

The publicly funded organizations listed here may be able to assist you in understanding the procedural safeguards and other provisions of the IDEA.

Your local school district _____

Pathfinder Family Center
- Minot 701-837-7500
- Toll Free 1-800-245-5840
- Website ..... http://www.ndcd.org/pathfinder
- FAX 701-837-7548

National Information Center for Children and Youth with Disabilities (NICHCY)
- Toll Free 1-800-695-0285
- Website ..... http://www.nichcy.org/

North Dakota Protection & Advocacy (P & A) Project
- Bismarck 701-328-2950
- Toll Free 1-800-472-2670

North Dakota Department of Public Instruction - Office of Special Education
- Bismarck 701-328-2277
- TDD 701-328-4920
- Website ..... http://www.dpi.state.nd.us/

The IDEA Advisory Committee meets several times each school year. This representative group of parents, administrators, university personnel, general and special educators makes recommendations about special education in North Dakota. Information about the advisory committee and its meeting schedule are available from DPI's Office of Special Education by calling (701) 328-2277.